

Bell thus uses its control over existing telephone equipment which it inherited as the successor to a regulated monopoly, to offer more favorable services to customers of ISPs affiliated with SBC.

**SBC-ASI is Seeking to Implement a New System Architecture That Consumers May Neither Want Nor Need**

36. Consumers with DSL connections are currently connected to their ISPs through an ATM cloud, a system architecture that has been available to ISPs since before SBC transferred the DSL customers of Pacific Bell to SBC-ASI, and on which ISPs and their customers have come to rely. This configuration enables ISPs to provide their customers with static IP addressing and “permanent virtual circuits” that allow for access to a host of enhanced digital services, including digital voice and video streaming services.<sup>11</sup> The features of the current architecture also offer the benefits of a tested and reliable system that is based on software that has already been acquired and installed by consumers.

37. In place of this tested architecture, SBC-ASI is proposing to require all ISPs and consumers to switch to new architecture that will prevent ISPs from providing their customers with standard static IP addressing and permanent virtual circuits. Consumers may also be required to purchase new software and hardware, even if they are

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<sup>11</sup> The current network configuration provides a permanent virtual circuit for each DSL customer. Through this architecture, ISPs are able to offer their customers static IP addresses. Static IPs allow customers to host their own websites, mail servers and other services requiring a fixed Internet routing location. Static IP addressing is often used by business customers as well as residential customers utilizing DSL transport to telecommute. ISPs often offer static IPs for free or a nominal charge, but will no longer be able to do so with this new configuration. The network change to PPPoE (point to point protocol over Ethernet) will virtually eliminate this value-added opportunity for ISPs and simultaneously create a new opportunity for SBC to push enhanced services down the same pipe to the ISPs’ customers. Moreover, PPPoE is far less flexible for independent ISPs’ network management efforts.

completely satisfied with their existing service and have no desire to switch over to a new operating system.

38. Far from offering an improved level of service, many customers of independent ISPs will see a drop in their connection burst speeds under this new architecture, unless they are willing to pay an additional ten dollars or more for a “premium” service that will be necessary to obtain the speeds they already enjoy. Customers of SBC affiliate Pacific Bell Internet, on the other hand, will be able to continue to enjoy current burst speeds without being subject to premium pricing. SBC-ASI’s effort unilaterally to implement this new architecture is thus simply another prong in its strategy to impose additional costs on independent ISPs on a discriminatory basis, forcing ISPs and consumers alike to adapt to infrastructure changes dictated by a monopolist.

39. CISPA is informed and believes that SBC is seeking to eliminate the ability of independent ISPs to provide business-class routed static IP addressing over DSL transport that traditionally is available over a significantly more expensive T-1 line. CISPA is informed and believes that Pacific Bell’s revenues from T-1 lines have decreased and that SBC may be engaged in a coordinated effort to require customers of independent ISPs to purchase more expensive T-1 lines in order to obtain the standard business class services they need. At the same time, CISPA is informed and believes that SBC is allowing Pacific Bell Internet to continue to offer standard static IP addressing to its DSL customers (as opposed to the “sticky IP” addressing offered by the “Point to Point Protocol over Ethernet”), thereby increasing its ability to lure DSL customers away from independent ISPs.

**SBC-ASI is Seeking to Impose a DSL Transport Contract on Independent ISPs that Will Institutionalize SBC's Monopoly Practices**

40. Over the past months, SBC-ASI has been circulating a new DSL transport contract for independent ISPs in California to sign (the "DSL Transport Contract"). A true and correct copy of the DSL Transport Contract, together with a cover letter from SBC-ASI, is attached hereto as Exhibit A. The DSL Transport Contract has been given to ISPs on a non-negotiable, "take-it-or leave it" basis.

41. This new DSL Transport Contract seeks unilaterally to eliminate benefits that have been available to independent ISPs and their customers, and is further evidence of SBC's effort to use its control over DSL infrastructure to capture 100% of the DSL served ISP market. Indeed, the DSL Transport Contract seeks to embody by agreement the very anti-competitive and monopolistic practices against which this complaint seeks relief.

42. With respect to the confidential information of customers that ISPs are required to provide in applying for a DSL connection for a customer, and which, CISPA is informed and believes and thereon alleges that, SBC has used to poach customers from ISPs, the DSL Transport Contract expressly authorizes SBC to share this information among its affiliates. Similarly, while ISPs are required to pay full price for the DSL connection, they are also required under the terms of the DSL Transport Contract to allow SBC to market advanced services directly to the customer of the independent ISP over the high speed portion of the local loop.

43. Under the new "take-it-or-leave it" contract, SBC-ASI retains ownership of the DSL connection, and proposes to give itself the right to market advanced services

over that connection to the customer of the ISP, even though it is the ISP that is paying for the facilities that make that connection possible. In addition, if the services being sold to the ISP's customer by SBC are using up the connection's bandwidth, it is the ISP, and not SBC, that is displaced and must curtail its services

44. In other words, not only is SBC insisting that the independent ISPs grant it permission to share confidential customer information that it can then use to steal the customers of ISPs, it is requiring ISPs to give SBC priority to sell advanced services to the customers of ISPs that may compete directly with that same ISP's advanced services over a connection paid for by the ISPs, a radical change in the basic nature of the service that has been available to ISPs until now. It is hard to imagine more blatantly monopolistic behavior.

45. The DSL Transport Contract also requires independent ISPs to migrate their customers to the new system architecture discussed above, or face disconnection from the DSL transport infrastructure. Although the contract pays lip service to the notion of SBC and independent ISPs agreeing on a reasonable schedule for this proposed migration, in the event of disagreement over the schedule, SBC gets to set the date. As is true throughout the contract, SBC in fact retains discretion to determine how, when and where DSL transport services are provided, with ISPs left to agree or face the prospect of being unable to offer any DSL transport to their customers.

46. At the same time, under the proposed DSL Transport Contract, ISPs are solely responsible for collecting DSL charges from consumers, even though the ISPs control neither the installation nor interruption of DSL service, and are required to give

SBC priority access to sell services to the DSL customers of ISPs. SBC proposes to enlist ISPs as its collection agents for DSL transport services, with the ISP obligated to pay SBC-ASI whether or not it is able to collect from the end-user

47. While some ISPs have long preferred to provide a combined bill to customers (so as to avoid SBC's repeated billing errors), SBC proposes to eliminate entirely the option of "split billing," in which SBC, through Pacific Bell, bills the customer for the DSL connection provided and controlled by SBC, and the ISP bills for ISP services provided for and controlled by the ISP. Although the benefit of split-billing has been available to independent ISPs since prior to the formation of SBC-ASI and the assumption by SBC-ASI of Pacific Bell's DSL customers, SBC-ASI now proposes unilaterally to withdraw this benefit from these transferred customers.

**SBC-ASI is Threatening to Discontinue DSL Services to ISPs and  
Their Customers Beginning on August 1, 2001, Unless ISPs Abide By the Terms  
DSL Transport Contract.**

48. Unless ISPs agree to abide by the terms of the DSL Transport Contract, SBC-ASI has threatened that it will discontinue DSL services to their customers in two phases.

49. First, in a letter sent to California ISPs this Spring, a true and correct copy of which is attached hereto as Exhibit B, SBC-ASI informed ISPs that beginning on August 1, 2001, it will discontinue processing new DSL orders on a "split billing" basis. Instead, SBC-ASI will only process DSL orders that comply with the billing procedures set forth in the new DSL Transport Contract, which require the ISP to pay SBC-ASI directly, whether or not the end-user pays for the service or disputes the charge, even

though SBC-ASI retains control over when and how the DSL transport service is provided. Furthermore, SBC-ASI has stated that as of December 31, 2001, it will no longer accept **any** DSL orders from ISPs that have not executed the DSL Transport Contract.

50. Second, as stated in the cover letter that was sent with the DSL Transport Contract, SBC-ASI will **terminate** DSL transport for customers of any ISP that has not executed the contract by December 31, 2002. This complete shutdown can be avoided only if ISPs submit to the terms of SBC-ASI's DSL Transport Contract. SBC-ASI is thus blatantly using its control over DSL infrastructure to make fundamental changes in the terms on which DSL transport is provided in California – all without the consent of the ISPs or the approval of the CPUC.

### **FIRST CLAIM**

#### **(Violation of Cal. Pub. Util. Code Section 451; CPUC Decision No. 00-05-021 - Inadequate Services and Unreasonable Rules)**

51. Complainant CISPA hereby realleges and incorporates by reference the facts alleged above as though set forth in full herein.

52. In engaging in the monopolistic, discriminatory and anti-competitive conduct described above, defendants Pacific Bell and SBC-ASI, individually and acting together, have failed to furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities, including DSL facilities, as are necessary to promote the safety, health, comfort, and convenience of their patrons, employees, and the public. On the contrary, Pacific Bell and SBC-ASI are seeking to leverage their control over such facilities into a monopoly over both broadband access to

and content on the Internet, thereby fundamentally limiting consumer choice with respect to Internet access and content.

53. In addition, the discontinuance of DSL service threatened by SBC-ASI would result in the impermissible withdrawal of just and reasonable DSL services, for the sole purpose of coercing ISPs and their customers into abiding by changes in service that eliminate important existing benefits, without the consent of ISPs or their customers or the approval of the Commission.

54. In engaging in the monopolistic, discriminatory and anti-competitive conduct described above, defendants Pacific Bell and SBC-ASI, individually and acting together, have also imposed rules pertaining to their DSL services and facilities that are not just and reasonable. Pacific Bell and SBC-ASI have imposed rules that, among other things, prevent California consumers from changing to an ISP other than an SBC affiliate, and that force consumers to switch to an SBC affiliate in order to obtain a DSL connection on a timely basis. In addition, SBC-ASI is seeking to impose these unjust and unreasonable rules on independent ISPs through a proposed DSL Transport Services Contract, which independent ISPs have been offered on a "take-it-or-leave it" basis, and which would institutionalize business practices that limit and deny consumer choice with respect to Internet access and content.

## **SECOND CLAIM**

**(Violation of Cal. Pub. Util. Code Section 453; CPUC Decision No. 00-05-021 - Discrimination in Provision of Services)**

55. Complainant CISPA hereby realleges and incorporates by reference the facts alleged above as though set forth in full herein.

56. In engaging in the monopolistic, discriminatory and anti-competitive conduct described above, defendants Pacific Bell and SBC-ASI, individually and acting together, have granted a preference or advantage to ISPs affiliated with SBC in providing and supporting DSL services. Under the common control of SBC, Pacific Bell and SBC-ASI have engaged in coordinated conduct intended to leverage their combined control over DSL infrastructure and support services into a monopoly for ISPs affiliated with SBC over the DSL served ISP business in California. As a result, California consumers who have selected an independent ISP as their service provider are denied the level of access to and support for DSL services that are afforded to customers of SBC affiliated ISPs, for the sole reason that customers of independent ISPs have exercised the choice to use an ISP other than an SBC affiliate.

57. In engaging in the monopolistic, discriminatory and anti-competitive conduct described above, Pacific Bell and SBC-ASI, individually and acting together, have also subjected the customers of independent ISPs, including the customers of members of complainant CISPA, to prejudice or disadvantage. Pacific Bell and SBC-ASI have discriminated against the customers of independent ISPs, among other ways: in declining to make DSL connections available to customers of independent ISPs on an equal basis, in providing inferior support and conditioning services for such connections, and in failing to provide equivalent access to information available concerning the development of DSL facilities.

### **THIRD CLAIM**

#### **(Violation of Cal. Pub. Util. Code Section 2896; CPUC Decision No. 00-05-021 - Failure to Provide Information and Reasonable Quality Standards)**

58. Complainant CISPA hereby realleges and incorporates by reference the facts alleged above as though set forth in full herein.

59. In engaging in the monopolistic, discriminatory and anti-competitive conduct described above, Pacific Bell and SBC-ASI, individually and acting together, have failed to provide sufficient information upon which California consumers may make informed choices among telecommunications services and providers. On the contrary, SBC-ASI and Pacific Bell have misled consumers into believing that if consumers want to get a DSL connection on a timely basis, they need to subscribe to an affiliate of SBC as their ISP.

60. In engaging in the monopolistic, discriminatory and anti-competitive conduct described above, Pacific Bell and SBC-ASI, individually and acting together, have also failed to comply with reasonable statewide service quality standards, including, but not limited to, standards for network technical quality, customer service, installation, repair, and billing. Instead, Pacific Bell and SBC-ASI have implemented standards for service quality that are substantially lower for the customers of independent ISPs, including for the customers of members of complainant CISPA. While the California Public Utilities Code requires reasonable and statewide standards, when it comes to customers of independent ISPs, Pacific Bell and SBC-ASI have used entirely unreasonable and selective service standards regarding network quality, customer service, installation, repair and billing.

#### **FOURTH CLAIM**

##### **(Violation of CPUC Decision No. 00-05-021 Failure to Maintain Prior Customer Service Levels)**

61. Complainant CISPA hereby realleges and incorporates by reference the facts alleged above as though set forth in full herein.

62. In granting SBC-ASI a certificate of public necessity and convenience for offering DSL services in California, which involved a transfer of DSL customers from Pacific Bell to SBC-ASI, the CPUC ordered that “Customers transferred from Pacific to applicant shall receive the benefits that would otherwise accrue to them as existing customers of Pacific or of applicant, and shall also receive the same benefits from applicant as would new customers of applicant.”

63. SBC-ASI is in violation of its authorizing certification because it has denied, and threatens to deny, to former Pacific Bell customers important benefits that accrued to them as customers of Pacific Bell. In particular, without limitation, prior to the SBC-ASI takeover of Pacific Bell DSL customers, these customers were able to change their ISPs in a matter of days while retaining their DSL connection. In an effort to “clench” customers who desire to switch their ISPs from Pacific Bell Internet, SBC-ASI now disconnects such customers and requires them to reapply for an entirely new connection, a process that can take weeks to complete, and that is subject to the availability of a DSL connection at that time.

64. In addition, the DSL Transport Contract that SBC-ASI seeks to impose on ISPs, including members of CISPA, proposes to eliminate a number of important benefits that were afforded to ISPs as DSL customers of Pacific Bell. The previously available

benefits that SBC-ASI unilaterally seeks to eliminate in this way include the option of split billing, as well as the ability of an ISP to offer services that are currently available, but that will be precluded by the new architecture that ISPs will be forced to use unless the customer is willing to purchase new software and hardware. Furthermore, even without an executed DSL Transport Contract, SBC-ASI has stated that beginning on August 1, 2001, it will discontinue processing DSL orders on a split billing basis. This denial to customers of SBC-ASI of significant benefits they enjoyed as DSL customers of Pacific Bell is a plain violation of the CPUC's order certifying SBC-ASI to operate in California.

#### **FIFTH CLAIM**

##### **(Violation of Cal. Pub. Util. Code Section 532; CPUC Decision No. 00-05-021– Preferential Agreements and Privileges)**

65. Complainant CISPAC hereby realleges and incorporates by reference the facts alleged above as though set forth in full herein.

66. In engaging in the monopolistic, discriminatory and anti-competitive conduct described above, Pacific Bell and SBC-ASI, individually and acting together, are extending to ISPs affiliated with SBC a form of contract or agreement, as well as rules, facilities and privileges that are not uniformly extended to all ISPs, including members of CISPAC. Under such contracts or agreements, the customers of independent ISPs, including members of CISPAC, are being denied benefits, including in regard to access and support for DSL services, that are being afforded to customers of ISPs affiliated with SBC, for the sole reason that customers of independent ISPs have chosen an ISP other than an SBC affiliate.

## **SIXTH CLAIM**

### **(Violation of Consumer Protection Rule 11; CPUC Decision 95-07-054 -Unauthorized Discontinuance of Service)**

67. Complainant CISPAC hereby realleges and incorporates by reference the facts alleged above as though set forth in full herein.

68. In engaging in the monopolistic, discriminatory and anti-competitive conduct described above, Pacific Bell and SBC-ASI, individually and acting together, have terminated telecommunication services to California consumers, without the advance notification and prior CPUC approval that is required under California law. Indeed, as discussed above, it is the policy of SBC-ASI to terminate the DSL service of a customer who changes his or her ISP from an SBC affiliate to an independent ISP, with that customer required to reapply for an entirely new connection, even though the customer has requested only to change his or her ISP, and not to terminate his or her DSL connection. CISPAC is informed and believes and thereon alleges that the DSL service of numerous California consumers has been so terminated without the prior approval of the CPUC.

69. SBC-ASI has also stated its intention to discontinue DSL service to customers of independent ISPs that decline to sign or abide by the DSL Transport Contract proposed by SBC-ASI. In this regard, SBC-ASI has said that beginning on August 1, 2001, it will refuse to take any new orders from independent ISPs on a split billing basis, and instead will unilaterally insist on compliance with the billing procedures set forth in the DSL Transport Contract. Effective December 31, 2002, SBC-ASI proposes to disconnect the customers of ISPs who already have a DSL connection, unless

the ISPs accede to the grossly one-sided contract proposed by SBC-ASI. SBC-ASI proposes to take these actions without the consent of the ISPs or their customers, and without the approval of the CPUC.

#### **SEVENTH CLAIM**

##### **(Violation of Cal. Pub. Util. Code Section 2891; Consumer Protection Rule 14 – Unauthorized Release of Private Customer Information)**

70. Complainant CISPA hereby realleges and incorporates by reference the facts alleged above though set forth in full herein. In engaging in the monopolistic, discriminatory and anti-competitive conduct described above, Pacific Bell and SBC-ASI, individually and acting together, have engaged in the unauthorized release and disclosure of non-public consumer information. In particular, without limitation, when customers of an independent ISP have requested a DSL connection with an ISP of their choice, SBC-ASI and Pacific Bell have, in many instances, bridged an SBC-affiliated ISP representative onto the call, rather than inform the caller that he or she must contact his or her ISP of choice directly to set up a DSL connection that utilizes the ISP of choice. In addition, SBC affiliated ISPs have used “test only” information gathered from their web site to contact the customer or even place unauthorized orders with an SBC affiliated ISP, without the authorization of the customer or the customer’s ISP.

## CATEGORY AND SCHEDULE OF THIS PROCEEDING

71. CISPA proposes that this proceeding be categorized as adjudicatory under Rule 6 of the CPUC's Rules of Practice and Procedure.<sup>12</sup> CISPA submits that this matter may require evidentiary hearings in the event there are disputed issues of fact.

72. CISPA has attempted to confer with Pacific Bell and SBC-ASI over the last ten months regarding DSL related-issues. Pacific Bell and SBC-ASI have failed to provide CISPA with adequate responses. For this reason, referring this matter to the CPUC staff for informal resolution would not be an efficient use of time or resources.

73. In light of the irreparable injury threatened by Defendants' actions, CISPA intends to file a motion or motions for a temporary restraining order and preliminary injunction. These motions may require expedited consideration. Subject to the foregoing, and based on the CPUC Rules of Practice and Procedure, complainant proposes the following schedule for this proceeding:

Answer to Complaint:	September 7, 2001
Prehearing Conference:	September 14, 2001
Scoping Memorandum:	September 21, 2001
Concurrent Testimony:	October 31, 2001
Concurrent Reply Testimony	November 30, 2001
Discovery cut-off:	December 14, 2001

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<sup>12</sup> Complainant CISPA reserves its right to litigate matters of federal law in a federal forum pursuant to England v. Louisiana Bd. of Medical Examiners, 375 U.S. 141 (1964). In addition, CISPA reserves its right to pursue claims in California Superior Court after affording the CPUC the opportunity to exercise primary jurisdiction over this matter in accordance with Farmers Ins. Exchange v. Sup. Ct., 2 Cal.4<sup>th</sup> 377 (1992) and Wise v. PG&E, 77 Cal.App.4<sup>th</sup> 287 (1999).

Evidentiary Hearing

January 14, 2002

Concurrent post hearing briefs:

February 20, 2002

**REQUEST FOR RELIEF**

1. For an order requiring Pacific Bell and SBC-ASI to enable customers of ISPs that have a DSL connection provided by SBC-ASI to change ISPs while maintaining their DSL connection, on substantially the same terms and conditions that were afforded to DSL customers of Pacific Bell prior to the transfer of such customers to SBC-ASI, including but not limited to the length of any service disruption, or the time taken to effect such change, which change in any event shall be completed within five (5) business days of a request therefor from the customer or the ISP of the customer.

2. For an order enjoining SBC-ASI from declining to process DSL orders for, or from discontinuing DSL services to, ISPs or customers of ISPs, on the grounds that an ISP declines to sign the DSL Transport Contract, or declines to abide by any of the terms set forth therein, including in regard to the proposed denial of the option for split-billing for DSL transport services.

3. For an order enjoining Pacific Bell or SBC-ASI from disclosing or allowing any ISP to have access to any non-public consumer information provided or made available to Pacific Bell or SBC-ASI by another ISP, and requiring Pacific Bell and SBC-ASI to adopt procedures reasonably calculated to prevent such disclosure, including by requiring any non-ISP third-party who is permitted access to such non-public consumer information to agree in writing not to disclose such information to any other third-party.

4. For an order enjoining Pacific Bell or SBC-ASI from providing any advantage or preference to any ISP, including but not limited to Pacific Bell Internet or Prodigy Communications Corporation, or discriminating in any manner against an ISP, including but not limited to:

- (i) allocating DSLAM ports.
- (ii) providing line conditioning or other support services for DSL transport.
- (iii) providing or making available information concerning planned DSLAM or other DSL facilities, including but not limited to remote terminal roll-outs.
- (iv) determining how far from a DSLAM facility a customer may be located in order to obtain DSL service;
- (v) giving an ISP the option of having the bill for DSL services included with or as part of the telephone bill of a consumer or customer.

5. For an order enjoining Pacific Bell or SBC-ASI, in providing and supporting DSL transport and related services, from extending to any ISP any contract or agreement, or any rules, facilities or privileges, unless such items are extended to all ISPs in California.

6. For an order requiring SBC-ASI and Pacific Bell to provide DSL services in a just, reasonable and adequate manner, including without limitation:

- (i) making DSL transport services available without requiring the purchase of SBC-ASI's Broadband Capabilities Gateway service;
- (ii) allowing continued use of permanent virtual circuits for DSL transport on a per line basis;

- (iii) allowing ISPs to obtain access to all DSLAMs within a central office without the need for virtual paths built to each and every DSLAM;
- (iv) making DSL services available within a reasonable and uniform distance from a central office or remote terminal housing a DSLAM.

7. For an order requiring SBC-ASI to submit to the CPUC a quarterly report on service provisioning for DSL transport services in California, with information segregated by affiliated and non-affiliated ISPs, such segregated information to include:

- (i) the number DSL Transport orders placed versus number of orders completed;
- (ii) the installation intervals for DSL Transport orders;
- (iii) the number of DSL Transport billing disputes and resolution of such disputes, if any.

8. For an order imposing penalties against Pacific Bell in the amount of \$20,000 per day for continuing violation of California Public Utilities law and the orders, decisions and rules of the CPUC;

9. For an order requiring Pacific Bell to cease billing and collection services for SBC-ASI until the Pacific Bell has provided a complete and public report to the CPUC on all billing disputes involving charges for DSL transport provided by SBC-ASI, the reasons for each dispute and the resolution of such disputes, if any.

10. For an order imposing penalties against SBC-ASI in the amount of \$20,000 per day for continuing violations of California Public Utilities law and the orders, decisions and rules of the CPUC

11. For the costs of suit;
12. For reasonable attorneys' fees pursuant to statute; and
13. For such other and further relief as the CPUC may deem just and proper.

Dated: July 25, 2001

Respectfully submitted,

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Attorneys for  
***California ISP Association, Inc.***

**VERIFICATION**

I, Jon Washburn, declare as follows:

1. The statements in the foregoing Complaint of the California ISP Association, Inc. Against Pacific Bell Telephone Company and SBC Advanced Solutions, Inc. are true of my own knowledge except as to matters which are stated therein on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct.

Executed on July \_\_, 2001 at Davis, California.

\_\_\_\_\_  
Jon Washburn  
President  
*California ISP Association, Inc.*

# **EXHIBIT V**

## **MAPS**



